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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,656	02/11/2004	Rafail Zubok	532/2x3 (F-280 Cont II)	3382
51640	7590	10/13/2005	EXAMINER	
LERNER, DAVID, et al.			MILLER, CHERYL L	
SPINE MP			ART UNIT	
600 SOUTH AVENUE WEST			PAPER NUMBER	
WESTFIELD, NJ 07090			3738	

DATE MAILED: 10/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.	Applicant(s)	
	10/776,656	ZUBOK ET AL.	
	Examiner	Art Unit	
	Cheryl Miller	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed August 22, 2005 have been fully considered but they are not persuasive. The applicant has argued that Shelokov (US 6,039,763) does not disclose a *single* saddle shaped first articulation surface having a *single* concave arc extending between ends of the surface and a *single* convex arc extending between sides of the surface and similar for the second articulation surface. The examiner disagrees. Shelokov clearly has shown a saddle surface having a single (only one concavity) concave arc extending between the ends (clearly seen in fig.1b) and a single (only one convexity) convex arc extending between the ends (clearly seen in fig.1a). The same is true for the second articulation surface, see rejection below for further explanation.

The applicant has also argued that Ferree (US 6,706,068) does not disclose on the first articulation surface, a single concave arc extending between the ends of the surface and on the second articulation surface, a single convex arc extending between the ends of the surface. The examiner disagrees. The arcs do indeed extend between the ends of the surface, that is, they are located between the two ends as seen in the figures. It is noted to the applicant, that although the applicant may argue that a single convex arc, for instance, does not extend the *entire* length of the surface, they have not claimed such language. If the applicant has intended to claim such language, wording such as "a first concave arc extending *from the leading end to the trailing end*" would be more appropriate. As currently claimed, Ferree discloses all limitations recited.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 8-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Shelokov (US 6,039,763, cited in previous office action). Shelokov discloses a first member (1) having a single saddle shaped articulation surface (seen in fig.1a-1c; saddle being broadly interpreted by the examiner to be a ridge extending between two peaks) having a single concave arc extending between two ends (only *one concave* arc seen in fig.1b, between 4 and 5; assuming the implant is inserted sideways, that is considering fig.1b to be a lateral view) and a single convex arc (3) extending between lateral ends (seen in fig.1a; assuming again, that Shelokov implant is inserted sideways), and a second member (10; seen in fig.2a-2c) having a single saddle shaped articulation surface having a single convex arc (only *one convex* arc near reference numeral 18, in fig.2b) extending between two ends (assuming Shelokov's implants are implanted sideways, 18, extends between leading and trailing ends; that is, the examiner is interpreting P14 to be the leading end and P13 to be the trailing end, in fig.2b), and a single concave arc (12; fig.2a) extending between first and second lateral ends, wherein the saddle shaped articulation surfaces are shaped to engage one another (fig.3a-4b), and allow rotation through a range of angles (col.4,

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lines 46-52; col.5, lines 55-60), and wherein the concave arcs are larger than the convex arcs (col.3, lines 6-10; col.5, lines 60-62; col.8, lines 37-42).

Claims 1-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Ferree (US 6,706,068 B2, cited previously). Ferree discloses a first member (upper plate seen in fig.7, 8, 10, 12) having a single saddle shaped articulation surface (col.3, lines 52-56; seen in fig.10; saddle being broadly interpreted by the examiner to be a ridge extending between two peaks), having a single concave arc (only one *concave* arc exists on the upper plate, seen in fig.7 on the right side) extending between two ends and a single convex arc (convex arc on upper plate is seen in fig.10; looking at the anterior or posterior side and it is shown to extend a length located between the two ends) extending between lateral sides, and a second member (lower plate seen in fig.7, 8, 10, 12) having a single saddle shaped articulation surface having a single convex arc (only one *convex* arc exists on the lower plate, seen in fig.7, 8 on the right side, extending between two ends (shown to extend a length located between the two ends), and a single concave arc (concave arc seen on lower plate in fig.10, looking at the anterior or posterior end) extending between first and second lateral sides, wherein the saddle shaped articulation surfaces are shaped to engage one another (fig.7, 8, 10, 12), and allow rotation through a range of angles (some rotation exists, although limited, col.3, lines 42-46), and wherein the concave arcs are larger than the convex arcs (col.4, lines 1-11, 35-38).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over both Shelokov (US 6,039,763) and Ferree (US 6,706,068 B2) taken separately. Both Shelokov (col.3, lines 6-10; col.5, lines 60-62; col.8, lines 37-42) and Ferree (col.4, lines 1-11, 35-38) separately disclose saddle surfaces having concave arcs with large radii than the convex arc, however, neither Shelokov nor Ferree disclose specific dimensional relationships claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the range of dimensions claimed, since when the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Miller whose telephone number is (571) 272-4755. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4755. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Cheryl Miller



BRUCE SNOW
PRIMARY EXAMINER